IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1300 of 1990

HONOURABLE MR.JUSTICE KS JHAVERI

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NEW INDIA ASSURANCE CO.LTD. - Appellant(s)
Versus
KUMBHAR PREJI CHAKUBHAI & 6 - Defendant(s)

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Appearance :
MR SUNIL PARIKH for RAJNI H MEHTA for Appellant(s) : 1,
MR MJ BUDDHBHATTI for Defendant(s) : 1 - 7.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 03/07/2006

ORAL JUDGMENT

1. This appeal is directed against the judgement and award dated 23rd August 1989 passed by the Motor Accident Claims Tribunal, Jamnagar, in MACP No.99 of 1982 whereby the said claim petition was allowed and the claimant was awarded a sum of Rs.82000/- along with interest at the rate of 12% per annum.

2. The claim petition was filed in pursuance of an accident which had occurred on 28th August 1981 at about 2 pm between village Dharampur-Bhangor on Bhanvad-Jamnagar Stateway Road, near mile stone No.8, when an Ambassador Taxi collided with a road-side tree. As a result of this accident one Bhagwanjibhai

sustained serious injuries and later on died. The heirs and legal representatives of said deceased Bhagwanjibhai filed Claim Petition No.99/82 and the driver of the Ambassador Taxi filed Claim Petition No.98/82. Both the claim petitions were heard together and the Tribunal passed the aforesaid award.This appeal is concerned with the award passed in MAC Petition No.99/82.

3. Learned counsel for the appellant has contended that in view of the specific provision contained in Section 95(2)(b)(ii) of the Motor Vehicles Act, the Insurance Company's liability in respect of passenger carried for hire or reward is limited to Rs.10000/-. The relevant part of the said section as existing at the time of the accident reads as under:

> “95.(2) subject to the proviso to sub-section (1), a policy of insurance shall cover any liability incurred in respect of any one accident up to the following limits, namely:-
>
> (a) xxx xxx xxx
>
> (b) where the vehicle in which passengers are carried for hire or reward or by reason of or in pursuance of a contract of employment, -
>
> (i) in respect of persons other than passengers carried for hire or reward, a limit of fifty thousand rupees in all,
>
> (ii) in respect of passengers, a limit of ten thousand rupees for each individual passenger.”

4. A perusal of the said section shows that the liability in respect of passengers, is limited to an extent of Rupees Ten Thousand for each individual passenger. The accident in question is of the year 1981 and therefore the liability would not be more than Rs.10000/- qua the Insurance Company. This view is supported by a decision of this Court in the case of United India Fire and General Insurance Co. Ltd. Vs. Bachu Kaba Satrotia and ors., reported in 1986(1) GLR 463 wherein it is held that under section 95(2) of Motor Vehicles Act (IV of 1959) the liability of insurer in respect of a passenger carried for hire or reward by statute is limited to rs.10000/- per individual passenger.

5. Learned counsel for the respondent-original claimant is not able to contest the aforesaid legal position. Therefore the award of the Tribunal which extents to Rs.82000/- is patently erroneous.

6. In the premises aforesaid, the present appeal is partly allowed. It is held that the liability of the present respondent nos.6 and 7 i.e. original opponent nos.1 and 2 shall remain intact to meet the entire claim awarded with interest as awarded by the Tribunal. However, so far as the present appellant Insurance Company is concerned, the award will stand modified and instead of of Rs.82000/- the award amount awarded against the appellant will be Rs.10000/- with running interest thereon at the rate of 12% per annum from the date of the application

till realization. It will be open to the original claimant to recover the remaining amount from respondent nos.6 and 7 i.e. original opponent nos.1 and 2. The remaining amount lying in the FDR along with interest shall be refunded to the Insurance Company. The award of the Claims Tribunal shall stand modified accordingly. No order as to costs.

[K.S. JHAVERI, J.]

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